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8 **UNITED STATES BANKRUPTCY COURT**  
9 **SOUTHERN DISTRICT OF NEW YORK**

10 In re RESIDENTIAL CAPITAL, LLC,

11 Debtor.

CASE NO.: 12-12020-MG

Chapter 11

Jointly Administered

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14  
15 **MOTION OF CREDITOR JULIO SOLANO FOR ORDER PURSUANT TO SECTION**  
16 **362(d)b OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 4001 AND LOCAL**  
17 **BANKRUPTCY RULE 4001-1 MODIFYING THE AUTOMATIC STAY TO ALLOW**  
18 **CONTINUATION OF PRE-PETITION LITIGATION**

19 1. Movant/Creditor Julio Solano, as plaintiff in a State Court action To Set  
20 Aside Trustee's Sale, To Cancel Written Instrument, Declaratory Relief, Unjust  
21 Enrichment, Imposition of Constructive Trust, Unfair Competition Under Business &  
22 Professions Code § 17200 et seq. (Unfair Business Act or Practice), Promissory Estoppel,  
23 Conversion, Conversion, Negligence, and Negligent Infliction of Emotional Distress  
24 ('the state court action'), brings this motion pursuant to section 362(d) of Title 11, 11  
25 U.S.C. §§ 101 *et seq.*, Rule 4001 of the Federal Rules of Bankruptcy Procedure, and Local  
26 Bankruptcy Rules for an order modifying the automatic stay to allow Solano's action  
27 against GMAC, as defendant, to continue in the Superior Court of California.  
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3 **PRELIMINARY STATEMENT**

4 2. Good cause exists to modify the automatic stay to permit the actions in  
5 which this Creditor is a party to proceed. A review of the balance of harms between  
6 this Creditor and the Debtor demonstrates that allowing the litigation to proceed in the  
7 state court as scheduled is proper.

8 3. The action against GMAC dates back to 2011, and negotiations between  
9 this Creditor and the Debtor regarding this matter began in 2009. Among other things,  
10 GMAC wrongfully foreclosed upon Creditor and Creditor sustained emotional distress  
11 as a result.

12 4. The state Superior Court requires Relief from the Automatic Stay to be  
13 granted in order for the action to proceed in the Superior Court of California.

14 **STATEMENT OF FACTS**

15 5. On June 7, 2011, Creditor Julio Solano filed the state court action in  
16 Superior Court of California. Solano filed a Second Amended Complaint on April 2,  
17 2012. Plaintiff alleges in relevant part as follows:

18 **Plaintiff's Tender of the Reinstatement Amount**

19 In or about 2010, after making many improvements, plaintiff had at  
20 least \$500,000.00 in equity in the Real Property, or according to  
21 proof, which represents the difference between the fair market  
22 value and all encumbrances on the Real Property on the date of the  
23 Trustee's Sale.

24 In or about December of 2010, plaintiff received a letter from  
25 GMAC representing that the reinstatement amount due was  
26 \$53,114.11, which was also reflected on plaintiff's December 20,  
27 2010 Mortgage Account Statement.

28 Plaintiff confirmed the reinstatement amount with a GMAC  
employee/agent on or about January 5, 2011.

On or about January 7, 2011, plaintiff tendered the reinstatement  
amount to GMAC, by remitting a cashier's check for \$53,114.11 to  
GMAC by overnight mail. GMAC received the reinstatement

1 amount of \$53,114.11 on January 8, 2011. As a result, plaintiff was  
2 not in default.

3 On or about January 11, 2011, plaintiff contacted GMAC, which  
4 confirmed possession of the cashier's check in the remittance  
5 amount of \$53,114.11.

6 However, on or about January 11, 2011, employees/agents of  
7 GMAC illegally and unlawfully rejected plaintiff's tender and  
8 represented to plaintiff that he owed an additional amount of  
9 approximately \$1,400.00 in order to reinstate his account. GMAC  
10 employees and agents represented to plaintiff that the additional  
11 funds were necessary to pay attorney fees.

12 Plaintiff immediately tendered the additional payment of  
13 approximately \$1,400.00 over the telephone by way of a credit card.

14 However, GMAC employees and agents refused to accept  
15 Plaintiff's credit card payment and tender, which would have  
16 reinstated Plaintiff's account and brought his house payments  
17 current. The plaintiff was not in default.

18 GMAC employees and agents insisted that they needed a new  
19 cashier's check that included both the reinstatement amount of  
20 \$53,114.11 and approximately \$1,400.00 for attorney fees in the total  
21 amount of \$54,514.11.

22 Plaintiff found himself in a "Catch-22" situation as his fervent  
23 attempts to tender the reinstatement funds to GMAC, and thus  
24 save his home, were stymied and rebuffed by GMAC.

25 Although GMAC representatives demanded a new cashier's check,  
26 they failed and refused to return in a timely manner plaintiff's  
27 cashier's check for \$53,114.11 that he had sent them and that  
28 remained in their possession. Therefore, plaintiff was prevented  
from forwarding a new cashier's check that would include both the  
\$53,114.11 and the approximately \$1,400.00 in attorney's fees that  
they demanded, thereby avoiding the foreclosure sale of his Real  
Property.

GMAC intentionally held plaintiff's cashier's check in its  
possession, and failed and refused to return plaintiff's \$53,114.11  
for approximately four (4) weeks, from January 8, 2011 to well into

1 February, 2011, after the foreclosure sale of plaintiff's Real  
2 Property, so that GMAC and The Bank of New York Mellon Trust  
3 Co. could foreclose and obtain the equity in the Real Property.

4 Prior to the Trustee's Sale on February 15, 2011, plaintiff had made  
5 many verbal requests to GMAC to honor his tendered  
6 reinstatement payments or return his cashier's check, so that he  
7 could send a new cashier's check to GMAC that would add and  
8 incorporate the demanded attorney fees, thereby preventing the  
foreclosure sale of his Real Property. As a result, plaintiff was not  
in default.

9 On at least January 15, January 20, January 30, and February 5 or  
10 10, 2011, plaintiff sought the aid of Redwood Credit Union, which  
11 had issued his \$53,114.11 cashier's check, to request that GMAC  
12 honor the cashier's check or return the funds, so that he could  
13 obtain a new cashier's check in order to again tender the  
14 reinstatement funds. The Branch Manager and Supervisor of  
15 Redwood Credit Union and two bank tellers contacted GMAC and  
16 sought to void the cashier's check in GMAC's possession in order  
17 to issue a new cashier's check. Plaintiff also signed a Claim for  
Refund or Replacement of Official Check Affidavit form given to  
him by Redwood Credit Union, made to the attention of GMAC  
Mortgage.

18 However, GMAC intentionally concealed and refused to provide a  
19 facsimile number or other contact information that would allow  
20 them to receive the Claim for Refund or Replacement of Official  
21 Check Affidavit form in a timely manner, and thereby avoid the  
22 foreclosure sale of his Real Property, so that GMAC and The Bank  
of New York Mellon Trust Co. could obtain the valuable equity in  
the Real Property.

23 Finally, on February 24, 2011, GMAC returned plaintiff's above-  
24 referenced cashier's check, after the foreclosure sale of his home  
25 had been held, with correspondence which stated, in pertinent part,  
as follows:

26 "This letter serves as our response to the  
27 correspondence...regarding the above-referenced account  
28 dated February 1, 2011 and received in our office on  
February 7, 2011.

1 We sincerely apologize for any inconvenience or frustration  
2 you have experienced. The correspondence indicates you  
3 received a letter reflecting the reinstatement amount due  
4 was \$53,114.11, which amount was reflected on the  
5 December 20, 2010 Mortgage Account Statement and which  
6 amount was confirmed with a Bankruptcy Department  
7 Representative on January 5, 2011. However, a Motion for  
8 Relief from the automatic stay placed by the Chapter 7  
9 bankruptcy filing was granted on January 8, 2011, and  
10 foreclosure proceedings resumed.

11 Due to the foreclosure status, the amount quoted was no  
12 long sufficient to reinstate the account...The check was  
13 received by GMAC Mortgage and subsequently returned to  
14 you...

15 The above-listed property went to trustee sale on February  
16 15, 2011. If you wish to discuss the process of foreclosure,  
17 please contact Executive Trustee Services..."

18 On March 11, 2011, ETS requested that a Trustee's Deed Upon Sale  
19 be recorded in the official records of Sonoma County, California as  
20 instrument No. 2011023076, indicating that plaintiff's home was  
21 sold at a public action on February 15, 2011 to The Bank of New  
22 York Mellon Trust Co.

23 After the Trustee's Sale, plaintiff and his wife and children, who  
24 were in a state of shock, immediately moved out of the Real  
25 Property and into a motel room, because of their fear of being  
26 evicted from their home on the Real Property by the Sonoma  
27 County Sheriff.

28 The Trustee's Sale was improperly held and the Trustee's Deed  
Upon Sale was wrongfully executed, delivered, and recorded,  
because there was arguably no breach of the obligation; there were  
invalid, irregular, and improper presale procedures; and the trustee  
illegally, fraudulently, and oppressively sold plaintiff's Real  
Property under a power of sale contained in the deed of trust to  
defendant The Bank of New York Mellon Trust Co.

The Trustee's Sale was improper and illegal because plaintiff  
tendered the reimbursement amounts that GMAC demanded, but

1 GMAC rejected and wrongfully retained plaintiff's tender. On or  
2 about January 7, 2011, plaintiff tendered by cashier's check to  
3 GMAC the full amount that GMAC demanded to bring his loan  
4 current, thus extinguishing the Notice of Default and making the  
5 subsequent Trustee's Sale void. On or about January 11, 2011,  
6 Plaintiff offered to tender to GMAC by telephone all of the  
7 additional monies that GMAC had subsequently claimed were due,  
8 which would have cured the alleged problem, if any, with  
9 plaintiff's initial tender; but GMAC refused plaintiff's good faith  
10 offer. Then GMAC wrongfully withheld plaintiff's cashier's check  
11 for over a month, until after the foreclosure, making a new tender  
12 by plaintiff impossible.

13 GMAC rejected plaintiff's tender in order to make it impossible for  
14 plaintiff to reimburse the amounts that GMAC claimed were due  
15 and owing before plaintiff's Real Property was sold at the Trustee's  
16 Sale, by withholding plaintiff's cashier's check and refusing to  
17 allow plaintiff to reimburse GMAC for the attorney fees by credit  
18 card.

19 The Trustee's Sale was improperly held, in violation of the terms  
20 and conditions of the promissory note and deed of trust and in  
21 violation of the duties and obligations of defendant beneficiary and  
22 defendant trustee to plaintiff, all to plaintiff's loss and damage, in  
23 that plaintiff has been wrongfully deprived of at least \$500,000.00,  
24 or according to proof, of equity in the Real Property, the beneficial  
25 use and enjoyment of the Real Property, and legal title by  
26 forfeiture.

27 Plaintiff has offered, and offers to tender, to defendant beneficiary  
28 or defendant trustee all amounts due and owing so that the claimed  
default may be cured and plaintiff may be reinstated to all former  
rights and privileges under the promissory note and deed of trust.  
Plaintiff is ready, willing, and able to tender those sums, if any, that  
the Court finds due and owing on rendering the accounting  
requested in this First Amended Complaint.

Plaintiff properly tendered the reinstatement amount to defendants  
and was not in default. Defendants knew this and nevertheless  
illegally rejected plaintiff's tender and sold plaintiff's home. The  
acts alleged above were willful, wanton, malicious, and oppressive,

1 were undertaken with the intent to defraud, and justify the  
2 awarding of exemplary and punitive damages."

3  
4 **BANKRUPTCY PROCEEDINGS**

5 6. Debtors filed voluntary petitions in this court under Chapter 11 of Title 11  
6 of the Bankruptcy Code on May 14, 2012.

7 7. On or about May 25, 2012, GMAC file Notice of Stay and Effect of  
8 Automatic Stay in the state court action. GMAC's notice states the state court action  
9 should be stayed pursuant to 11 U.S.C. § 3962(a).

10 8. On July 13, 2012, this court granted at least partial relief from the  
11 automatic stay and issued Final Supplemental Order. The Final Supplemental Order  
12 provides at Item 14 on page 7 as follows:

13 "The stay imposed by section 362(a) of the Bankruptcy Code  
14 applicable to (a) pending and future foreclosure actions initiated by  
15 the Debtors or in those states providing for non-judicial  
16 foreclosures, by a borrower; and (b) pending and future eviction  
17 proceedings with respect to properties for which a foreclosure has  
18 been completed or is pending, is hereby modified pursuant to the  
19 following terms and conditions:

20 (a) except as set forth herein, a borrower, mortgagor, or lienholder  
21 (each, an "Interested Party") shall be entitled to assert and  
22 prosecute direct claims and counter-claims relating exclusively to  
23 the property that is the subject of the loan owned or serviced by a  
24 Debtor for the purposes of defending, unwinding, or otherwise  
25 enjoining or precluding any foreclosure, whether in a Judicial State  
26 or a Non-Judicial State, or eviction proceeding, where a final  
27 judgment (defined as any judgment where the right to appeal or  
28 seek reconsideration has expired or has been exhausted) permitting  
the foreclosure or eviction has not been awarded or, with respect to  
completed foreclosure sales in Non-Judicial States, where any  
applicable challenge period has not yet expired, and to prosecute  
appeals with respect to any such direct claims or counter-claims;  
(b) absent further order of the Court, the automatic stay shall  
remain in full force and effect with respect to all pending and  
future Interested Party direct claims and counter-claims: (i) for  
monetary relief of any kind and of any nature against the Debtors,

1 except where a monetary claim must be plead in order for an  
2 Interested Party to a assert a claim to defend against or otherwise  
3 enjoin or preclude a foreclosure (each a "Mandatory Monetary  
4 Claim"); (ii) for relief that if granted, would not terminate or  
5 preclude the prosecution and completion of a foreclosure or  
6 eviction; or (iii) asserted in the form of a class action or collective  
7 action;

8 (c) absent further order of the Court, the stay shall remain in full  
9 force and effect with respect to any party seeking to intervene to  
10 assert related claims against the Debtors or any class action or  
11 collective action brought by any Interested Party on behalf of any  
12 other Interested Party or class of Interested Parties;

13 (d) under no circumstances shall an Interested Party be entitled to  
14 enforce against, recoup, setoff or collect from the Debtors any  
15 judgment or award related to any direct claim or counter-claim for  
16 which the automatic stay has been lifted by the terms of this Order,  
17 including, without limitation, a Mandatory Monetary Claim;

18 (e) the Debtors shall retain the right, upon appropriate motion and  
19 notice to any affected Interested Party, to seek to impose any  
20 provision of section 362(a) of the Bankruptcy Code modified by this  
21 Order and to the extent such relief is sought, the Debtors will not  
22 object to the Interested Party's telephonic participation at any  
23 hearing on the motion; and

24 (f) nothing set forth herein shall preclude or limit any Interested  
25 Party from seeking relief from the automatic stay under section  
26 362(a) of the Bankruptcy Code on appropriate motion and notice to  
27 the Debtors and parties in interest."  
28

29 Creditor seeks to obtain clarification because debtor's counsel in the state court  
30 action contends that Order does not give Debtor relief on all of his causes of action.

### 31 JURISDICTION

32 9. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157  
33 and 1334. Venue of this motion is proper in that this district pursuant to 28 U.S.C. §§  
34 1408 and 1409. This motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).

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36 //



**ARGUMENT**

**THE COURT SHOULD LIFT OR MODIFY THE AUTOMATIC STAY  
TO ALLOW THE STATE COURT LITIGATION  
TO PROCEED TO JUDGMENT**

10. The statutory predicates for the relief requested herein are sections 362(a) and (d) of the Bankruptcy Code. Under the Bankruptcy Code, a stay is both temporary in duration and subject to being modified or terminated. The Court should enter an order lifting or modifying the automatic stay pursuant to section 362(d) of the Bankruptcy Code allowing the California litigation to proceed to judgment against Debtor for a number of reasons.

11. In Northern Pipeline Constr. Co. v. Marathon Pipe Line Co. (1982) 458 U.S. 50, the Supreme Court considered constitutional restraints on bankruptcy court jurisdiction. The plurality distinguished those issues "at the cord of the federal bankruptcy power...from the adjudication of state-created private rights." *Id.* at 71. The bankruptcy court can exercise jurisdiction over the former, but cannot exercise jurisdiction over a state law claim that arose pre-petition. Such a claim can be adjudicated only in an Article III court. The claims within the state Superior Courts involve state real property law, and should be adjudicated by the state courts. In each action, the court must determine the priority of multiple encumbrances upon each property, the validity of foreclosure proceedings, the enforceability of documents recorded in county recorder's offices within California whether subsequent buyers of this property are bona fide purchasers under the state recording statutes, whether subsequent encumbrances of these properties are bona fide encumbrances under state law, and/or other complex issues of state law. Such claims should be adjudicated by the state Superior Courts in which the claims were filed.

12. Moreover, if the Court does not modify the automatic stay, this Creditor will be forced to choose between waiting indefinitely to proceed with the state court action against all defendants in the pending state Superior Court, or moving to sever the Debtor from the other non-debtor defendant, proceeding with the litigation as to

1 the non-debtor defendant and then litigating the claims against the Debtor defendant at  
2 some later point. Judicial efficiency will be served if the California State Superior Court  
3 action is permitted to resolve all of the litigation against all of the defendants in a single  
4 trial, and the balance of hardships mandates that the trial proceed now rather than  
5 later.

6 13. Finally, permitting the state Superior Court action to proceed will have  
7 minimal impact upon the debtor and its estates. On information and belief, the Debtor  
8 has insurance coverage for most if not all of any judgment against it. The facts  
9 mandate modification of the automatic stay to permit this Creditor to proceed against  
10 the Debtors.

11 **A. Standards for Modification of the Automatic Stay**

12 14. Section 362(d) of the Bankruptcy Code provides that the automatic stay  
13 shall be modified for "cause." 11 U.S.C. § 362(d)(1). The Sonnax factors require a court  
14 to consider (1) whether relief would result in a particular or complete resolution of the  
15 issues; (2) lack of any connection with or interference with the bankruptcy case; (3)  
16 whether other proceedings involve the debtor as a fiduciary; (4) whether a specialized  
17 tribunal with the necessary expertise has been established to hear the cause of action;  
18 (5) whether the debtor's insurer has assumed full responsibility for defending it; (6)  
19 whether the action primarily involves third parties; (7) whether litigation in another  
20 forum would prejudice the interests of other creditors; (8) whether the judgment claim  
21 arising from the other action is subject to equitable subordination; (9) whether  
22 movant's success in the other proceeding would result in a judicial lien avoidable by  
23 the debtor; (10) the interests of judicial economy and the expeditious and economical  
24 resolution of litigation; (11) whether the parties are ready for trial in the other  
25 proceedings; and (12) impact of the stay on other parties and the balance of the harms.  
26 Sonnax Indus., Inc. v. TRI Component Products Corp. (In re Sonnaz Indus., Inc.) (2<sup>nd</sup>  
27 Cir. 1990) 907 F.2d 1280, 1286.  
28

1 In applying Sonnax standard, "it will often be more appropriate to permit  
2 proceedings to continue in their place of origin, when no great prejudice to the  
3 bankruptcy estate would result, in order to leave the parties in their chosen forum and  
4 to relive the bankruptcy court from many duties that may be handled elsewhere."  
5 Matter of Holtkamp (7<sup>th</sup> Cir. 1982) 669 R.2d 505, 508 (citing S. Rep. No. 989, 95<sup>th</sup> Cong.,  
6 2d Sess. 50 *reprinted in* 1978 U.S.C.C.A.N. 5787, 5836) (affirming decision to lift stay to  
7 allow personal injury case to proceed because civil action did not jeopardize estate  
8 where insurer assumed full responsibility for defending the litigation). Not all of the  
9 Somax factors are relevant in each case, and the Court need not assign equal weight to  
10 each factor. In re New York Med. Group. P.C. (Bankr. S.D.N.Y. 2001) 265 B.R. 408, 413  
11 (modifying automatic stay to allow medical malpractice suit to proceed against  
12 liquidating debtor).

13 **B. Both the Balancing Test and the Sonnax Factors Require**  
14 **Modification of the Automatic Stay to Permit this**  
15 **Creditor to Continue to Judgment**

16  
17 15. All of the relevant factors under the three-pronged test and Sonnax  
18 mandate modification of the automatic stay to permit this Creditor to proceed to  
19 judgment in the state Superior Court. First, this Court should allow the California  
20 Court to decide the issues of state real property law. When the bankruptcy court  
21 cannot adjudicate pre-petition claims, the stay should be modified to permit the action  
22 to continue in the original court. See In re Cooke 2007 WL 2102687, at \*3.

23 16. Furthermore, severe prejudice to Creditor may result if the stay is not  
24 modified. The action has been pending over a year and a half. Further delay would  
25 effectively prevent justice and reward Debtor for its delay. In contrast, neither the  
26 Debtor nor the chapter 11 estate will be prejudiced in any significant degree, nor will  
27 material burdens be imposed on the Debtor, if the Court permits the state Superior  
28 Court action to proceed in the state court. In their bankruptcy filings, Debtor indicated

1 that sufficient assets exist to pay unsecured claims, and Debtor intends to continue  
2 operations after the conclusion of the bankruptcy. *See Voluntary Petition of GMAC*  
3 *Mortgage, LLC.*

4 17. Relief from the automatic stay will ensure judicial economy and will allow  
5 the most efficient and expeditious resolution of this Creditor's claims, which were  
6 pending in the state court before the bankruptcy petitions were filed. In similar  
7 circumstances, courts have frequently modified the automatic stay to allow prepetition  
8 litigation to continue where discovery not required or had already taken place. *See In*  
9 *re Fischer* (1996) 202 B.R. 341, 355 (granting stay relief to allow civil RICO claims to  
10 proceed where discovery was near completion); *In re Rexene* (1992) 141 B.R. 574  
11 (granting relief from stay where document discovery had been completed and only a  
12 few depositions remained).

13 18. Modifying the stay to allow this Creditor to continue would be the most  
14 efficient and cost effective way to achieve complete resolution of the issues raised in  
15 this case. This creditor has alleged claims against other defendants based on the same  
16 facts at issue in the claims against the Debtor, and only the state trial court may render  
17 a judgment binding on all parties in that state court action. *See New York Med. Group*  
18 (2001) 265 B.R. 408, 413 (modifying the stay to allow prepetition litigation to continue  
19 where only state court could render complete judgment). While it is possible that the  
20 litigation against the non-debtor defendant could proceed if the claims against them are  
21 severed from the claims against the Debtor, it would be extremely expensive and  
22 inefficient to force this Creditor to try the case twice against two sets of defendants, and  
23 it would be unfair to force this Creditor to wait indefinitely to obtain recovery from the  
24 Debtor's insurance when the burden on the Debtors of permitting the trial to go  
25 forward is minimal. For these reasons, judicial economy and the interest in expediting  
26 complete resolution of the issues raised by this Creditor requires that claims that may  
27 be decided in a non-bankruptcy court be resolved in the non-bankruptcy courts in  
28

1 which the claims were commenced. See In re Larkham (1983) 31 B.R. 273, 276; In re  
2 Cooke (2007) 2007 WL 2102687 at \*3.


3 19. The automatic stay should be modified where the purposes of section  
4 362(a) of the Bankruptcy Code would not be served by leaving the stay in effect. See  
5 e.g. In re Continental Airlines, Inc. (1993) 152 B.R. 420, 426 (finding cause to lift the  
6 automatic stay to permit movant in federal district court). In this case, enforcing the  
7 automatic stay would not promote any of the general policies of the Bankruptcy Code  
8 (i.e. "protect[ing] property that may be necessary for the debtor's fresh start and...  
9 provid[ing] the dismemberment of a debtor's assets by individual creditors levying on  
10 the property." Collier on Bankruptcy § 362.03 at 362-13 (15<sup>th</sup> ed. Rev. 2006).

11 20. Finally, policy concerns mandate modification of the automatic stay in  
12 this case. In enacting the Bankruptcy Code, Congress noted that, while the automatic  
13 stay had broad application, "it will often be more appropriate to permit proceedings to  
14 continue in their place of origin, when no great prejudice to the bankruptcy estate  
15 would result, in order to leave the parties in their chosen forum and to relieve the  
16 bankruptcy court from many duties that may be handled elsewhere." In re Holtkamp  
17 (1982) 669 F.2d 505, 508 (citing S. rep. No. 989, 95<sup>th</sup> Cong. 2d Sess. 50). Here, it would  
18 increase efficiency to have the claims outlined above, which involve California state  
19 law.

20 21. A discharge in bankruptcy does not affect the liability of insurers and  
21 does not prevent an injured party from establishing the insurers' liability by  
22 proceeding against a discharged debtor. Houston v. Edgeworth (In re Edgeworth), 993  
23 F.2d 51, 53-55 (5<sup>th</sup> Cir. 1993).

24 THEREFORE, for the above-stated reasons, this Creditor should be granted  
25 Relief from the Automatic Stay to pursue his claims against Debtor in state court.

26  
27 Dated: January 10, 2013

28  
  
Richard Sax  
Attorney for movant/creditor Julio Solano